

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

IN RE: §
BALLENGER CONSTRUCTION CO. § CASE NO. 12-20645
Debtor §

**MOTION AND NOTICE OF TRUSTEE'S INTENT TO SELL
PROPERTY FREE AND CLEAR OF LIENS CLAIMS AND INTERESTS**

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

There will be a hearing on this motion on _____ at _____ o'clock in courtroom _____.

To All Parties in Interest:

Please take notice that Michael B. Schmidt, the Liquidating Trustee under the confirmed plan in the above referenced Case ("Trustee") hereby moves this court for authority to sell the Property hereafter described in Kendall County, Texas for the total sum of \$2,450,000.00 to Paul Lucci and Dena Lucci, 41 W. Ranch Trail, Morrison, CO 80465, as follows:

A 310.6 acres tract in Kendall County, Texas; commonly known as 825 FM 473, Comfort, TX 78013, more specifically described by metes and bounds on **Exhibit "A"** attached hereto and incorporated herein.

The Trustee pursuant to 11 U.S.C. §363 intends to sell the Trust's interest in the Property to Buyer, free and clear of all liens, claims and interests for the total cash sum of \$2,450,000.00, AS IS, WHERE IS and WITH ALL FAULTS in accordance with the terms and provisions of the Contract attached hereto and incorporated herein as **Exhibit 1**. To the extent valid, all liens, claims and interest shall attach to the proceeds of the sale. The Trustee is simultaneously paying the \$176.00 filing fee for this Motion. The Trustee moves the Court to waive the stay provided under FRBP 6004(h).

Frost National Bank ("Frost"), who holds a first lien against the Property, has offered a credit bid of \$2,300,000.00 for the Property. Attached hereto and incorporated herein as **Exhibit "2"** is a *proforma* closing statement that reflects upon closing of this proposed sale to Buyer, there shall be cash in the amount of \$2,308,387.18, available for payment to Frost. The Trustee

believes Buyer's offer to be, therefore, superior to Frost's offered credit bid of \$2,300,000.00, as Frost's offer does not include payment of closing costs.

The sale is being made in good faith, to a third party unaffiliated buyer, as the result of an arms-length transaction. The sale of this property will benefit the estate in that the net funds received will be used to pay down substantially the lien of Frost, unpaid taxes and closing costs. The Trustee and the estate retain all rights under 506 (c) of the Code. Trustee believes that the sales price is the best price obtainable.

The Trustee requests, at his discretion, upon his review and verification of any valid liens, (other than Frost's lien which shall be paid at closing), the Court authorizes him to pay all such liens and broker fees and closing costs, including attorney documentation fees from the proceeds of the sale or have such liens and fees (or any portion thereof) withheld and paid by the title company at closing. The Property is released from all liens, claims and interest (including, but not limited to those set forth on the **Schedule 'C'** attached hereto), and attach to the sales proceeds (to the extent they are valid) upon consummation by the Trustee of this approved sale. Provided, however, the ad valorem tax liens for the 2015 tax year will be expressly retained in the Property until the payment by the purchaser of the 2015 ad valorem taxes. The Trustee also requests he be authorized to execute all necessary documents and take all such further action deemed by him necessary to transfer ownership to Buyer of the Property, without further order of this Court. Further, the Trustee requests such earnest money contract and each of its terms and conditions be approved and become binding upon all Parties upon the execution of this order.

Objections and requests for a hearing before the Bankruptcy Court, if any, as to the above sale and termination of the month to month lease, shall be in writing and filed with the clerk of the Bankruptcy Court and served upon the Trustee at the address shown below. Any objections not timely filed and served may be deemed waived.

WHEREFORE, PREMISES CONSIDERED, Michael B. Schmidt, Trustee prays that this Court enter an Order Approving this Motion to Sell Free and Clear of Liens, Claims and Interests and for any further relief that he may be justly entitled to.

DATE: February 11, 2015

Law Office of Michael B. Schmidt

/S/MICHAEL B. SCHMIDT
Michael B. Schmidt,
401 Grant Pl.
Corpus Christi, Texas 78411
TBN 17775200 FBN 10260
361/884-9949
FAX: 361/884-6000
Attorney for the Trustee

CERTIFICATE OF SERVICE

I do hereby certify that on February 11, 2015, I served a copy of the foregoing motion to the persons listed below and on the service list electronically and/or by regular mail.

/S/MICHAEL B. SCHMIDT
MICHAEL B. SCHMIDT

IRS
Centralized Insolvency Operation
P. O. Box 7346
Philadelphia, PA 19101

Frost National Bank
c/o Craig Power, Attorney
Cokinos, Bosien & Young
1221 Lamar, 16th Floor
Houston, TX 77010
Email: CPower@cbylaw.com

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NOTICE TO CREDITORS AND PARTIES IN INTEREST

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted. If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing. Represented parties should act through their attorney.

There will be a hearing on this motion on _____ at _____ o'clock in courtroom _____.

Please take notice that on the date written below, Michael B. Schmidt, Liquidating Trustee for the above bankruptcy estate, filed his Motion and Notice of Trustee's Intent to Sell Property Free and Clear of Liens, Claims and Interests. Said Motion and Notice is on file with the United States Bankruptcy Clerk, and may be reviewed during regular business hours. By said Motion and Notice, a request is made for the Court to approve Trustee's Motion filed this date. The property is to be sold to PAUL LUCCI AND DENA LUCCI, for a sales price of \$2,450,000.00 and is described as: A 310.6 acres tract in Kendall County, Texas; commonly known as 825 FM 473, Comfort, TX 78013 (**See Exhibits to the Motion**).

All requests for hearing must be in writing, filed with the Bankruptcy Clerk, 1133 N. Shoreline, 2nd Floor, Corpus Christi, TX 78401 and a copy served on counsel for the Trustee.

Dated: February 11, 2015

By: /s/ MICHAEL B. SCHMIDT
Michael B. Schmidt TBN: 17775200
401 Grant Pl.
Corpus Christi, Texas 78411
361/884-9949 FAX: 361/884-6000

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
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IN RE: §
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**ORDER AUTHORIZING SALE FREE AND
CLEAR OF LIENS, CLAIMS AND INTERESTS**

Came on to be heard Michael B. Schmidt, Trustee's Motion and Notice ("Motion") to sell for \$2,450,000.00 all of the Trust's interest in certain Property in Kendall Country, Texas, being more particularly described on Exhibit "A" attached to the Motion and in the Contract which is attached to the Motion as **Exhibit 1**, which are incorporated herein for all purposes (the "Property") to PAUL LUCCI AND DENA LUCCI ("Buyer"). This sale is AS IS AND WITH ALL FAULTS and shall be free of liens, claims and interests by Trustee. The Court having heard the evidence and argument of counsel is of the opinion that such Motion should be granted, the Court is of the opinion that the relief requested is necessary and proper and is in the best interest of the estate and the creditors.

And, THEREFORE:

IT IS ORDERED that Trustee shall sell to Buyer, all of the Trust's interest in the Property in Kendall Country, Texas, for \$2,450,000.00 The sale shall be made free and clear of any and all liens, claims interest in such interest, but that any liens, claims and interests shall attach to the proceeds received by the Trustee for such sale, to the extent same are valid. This sale is made and accepted AS IS, WHERE IS and WITH ALL FAULTS, AND WITHOUT REPRESENTATIONS OF ANY KIND.

IT IS FURTHER ORDERED that this sale shall be free and clear of any and all liens, claims and interest in such Property, including, but not limited to the lien, claim or interest (if any) of: Frost National Bank, any state or federal taxing district or agency; and any other party of record; that any liens, claims and interests shall attach to the proceeds received by the Trustee for such sale to the extent same are valid. The Trustee shall cause Frost National Bank to be paid at closing no less than \$2,300,000.00 upon closing and funding of this sale.

IT IS FURTHER ORDERED that the Trustee shall pay the filing fee for this Motion of \$176.00.

IT IS FURTHER ORDERED that the Trustee, at his discretion, upon his review and verification of all valid liens is authorized to pay all such liens, specifically including payment to Frost National Bank at closing and funding as directed above, as well as broker fees and other closing costs, including attorney documentation fees, from the proceeds of the sale or have such liens and fees (or any portion thereof) withheld and paid by the title company at closing. The title company closing this sale shall follow and comply with the Trustee's written instructions to them

on the amounts of and to whom distributions of the proceeds of this authorized sale shall be made. The Property is released from all liens, claims and interest (including, but not limited to those set forth on the **Schedule “C”** attached hereto) and attach to the sales proceeds (to the extent they are valid) upon closing and funding of this approved sale. Provided, however, the ad valorem tax liens for the 2015 tax year are hereby expressly retained in the Property until the payment by the Buyer of the 2015 ad valorem taxes. The Trustee is authorized to execute all necessary documents and take all such further action deemed by him necessary to transfer ownership to Buyer of the Property, without further order of this Court. Further, the Contract attached to the Motion and each of its respective terms and conditions are hereby APPROVED and shall become BINDING upon all Parties upon the execution of this order.

IT IS FURTHER ORDERED THAT The Trustee is authorized to take such further and other actions, including the execution of further documents, as may be necessary to transfer to Buyer the Trust’s interest in the Property, and to fully accomplish the purposes of this Order.

The Stay provided under FRBP 6004(h) is waived. The Trustee and the estate retain all rights under 506 (c) of the Code.

Dated

Richard S. Schmidt
United States Bankruptcy Judge